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OCTOBER TERM, 1966.

No. 575

HELEN JACKSON,
Petitioner,

versus

LYKES BROS. STEAMSHIP CO., INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

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LIST OF AUTHORITIES.

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Cases:

Cortez v. Baltimore Insular Line, Inc., 287 U.S. 367, 53 S. Ct. 173, 77 L. Ed. 368 (1932) 4

Harrisburg, The, 119 U.S. 199, 7 S. Ct. 140, 30 L. Ed. 358 (1886) 4

Pennsylvania Railroad Company v. O'Rourke, 344 U.S. 334, 73 S. Ct. 302, 97 L. Ed. 367 (1953) 3

Reed v. Steamship YAKA, 373 U.S. 410, 83 S. Ct. 1349, 10 L. Ed. 2d 448 (1963) 4

South Chicago Coal & Dock Co. v. Bassett, 309 U.S. 251, 60 S. Ct. 544, 84 L. Ed. 732 (1940) 2

Southern Pacific Co. v. Jensen, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917) 3

Swanson v. Marra Bros., Inc., 328 U.S. 1, 66 S. Ct. 869, 90 L. Ed. 1045 (1946) 2

Tungus, The v. Skovgaard, 358 U.S. 588, 79 S. Ct. 503, 3 L. Ed. 2d 524 (1959) 4

STATUTES.

U.S.C., Title 33, Sections 901 et seq., The Longshoremen's and Harbor Workers' Compensation Act 1

U.S.C., Title 46, Section 688, The Jones Act 1

Louisiana Revised Statutes, 23:1021 et seq., Louisiana Workmen's Compensation Act 1

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MAY IT PLEASE THE COURT:

The brief of petitioner fails to set forth accurately the issues and is misleading in its statement of the holding of the lower courts. This action was instituted in personam—and in personam only—in the Louisiana state courts, by a Louisiana resident, for the allegedly wrongful death of a longshoreman, also a Louisiana resident, employed by respondent, a Louisiana corporation, to work aboard respondent's vessel at New Orleans, Louisiana.

Petitioner sought recovery for the death under (1) the Jones Act (46 U.S.C. § 688); (2) the Louisiana Workmen's Compensation Act (L.R.S. 23:1021 et seq.); (3) The Longshoremen's and Harbor Workers' Compensation Act (33

U.S.C. § 901 et seq., hereinafter referred to as the "Longshoremen's Act"); (4) miscellaneous articles of the Louisiana Civil Code; and (5) the general maritime law.

The trial court correctly dismissed the action, holding that petitioner's only cause of action is under the Longshoremen's Act over which the state court has no jurisdiction. The Louisiana Court of Appeals affirmed the dismissal and the Louisiana Supreme Court denied writs of certiorari and review.

(1) THE JONES ACT.

The Jones Act does not provide a cause of action for the death of a longshoreman. *South Chicago Coal & Dock Co. v. Bassett*, 309 U.S. 251, 60 S. Ct. 544, 84 L. Ed. 732 (1940); *Swanson v. Marra Bros., Inc.*, 328 U.S. 1, 66 S. Ct. 869, 90 L. Ed. 1045 (1946). As this Honorable Court stated in denying Jones Act recovery to a longshoreman in *South Chicago Coal & Dock Co. v. Bassett, supra*, at 309 U.S. 256:

> "The legislative history of the exception now before us throws light upon the intent of Congress. For those employees who are entitled to compensation, the remedy under the (Longshoremen's) Act is exclusive. §5. This made inapplicable to such employees the provision of §33 of the Merchants Marine Act (called the Jones Act) which carried to 'seamen' at their election the benefit of the provisions of the Federal Employers' Liability Act." (First parenthesis added)

(2) LOUISIANA WORKMEN'S COMPENSATION ACT.

Since the decedent was working aboard a vessel in navigable waters at the time in question, the Louisiana Workmen's Compensation Act cannot provide a remedy. *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 37 S. Ct. 524, 61 L. Ed. 1086 (1917); *Pennsylvania Railroad Company v. O'Rourke*, 344 U.S. 334, 73 S. Ct. 302, 97 L. Ed. 367 (1953).

(3) LONGSHOREMEN'S ACT.

Although the Longshoremen's Act is admittedly the proper remedy for petitioner, jurisdiction over the Longshoremen's Act is vested exclusively in a federal administrative agency, and for judicial review in the federal courts to the exclusion of the state courts. 33 U.S.C. § 919, 921.

(4) LOUISIANA CIVIL CODE ARTICLES.

Since the death allegedly resulted from service aboard a vessel in navigable waters, the Longshoremen's Act is clearly applicable to the exclusion of state law, 33 U.S.C. § 905. The act by its own terms is the exclusive remedy as it recites:

> "The liability of an employer prescribed in section 904 of this title shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependants, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death . . . ."

(5) GENERAL MARITIME LAW.

The general maritime law does not, nor has it ever, provided a cause of action for wrongful death. *The Harrisburg*, 119 U.S. 199, 7 S. Ct. 140, 30 L. Ed. 358 (1886); *Cortez v. Baltimore Insular Line, Inc.* 287 U.S. 367, 53 S. Ct. 173, 77 L. Ed. 368 (1932); *The Tungus v. Skovgaard*, 358 U.S. 588, 79 S. Ct. 503, 3 L. Ed. 2d 524 (1959).

Petitioner's invocation of *Reed v. Steamship YAKA*, 373 U.S. 410, 83 S. Ct. 1349, 10 L. Ed. 2d 448 (1963), is misplaced inasmuch as petitioner was not here proceeding *in rem* in a personal injury action but sought recovery in the state court *in personam* for wrongful death.

CONCLUSION.

Accordingly, it is respectfully submitted that appellant's exclusive remedy is provided by the Longshoremen's Act over which the state courts have no jurisdiction; and thus the writ should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE.

I, William E. Wright, a member of the bar of this Court, do hereby certify that copies of the foregoing brief have been served upon petitioner by mailing same to petitioner's counsel of record, Charles R. Maloney, Esquire, 816 Richards Building, New Orleans, Louisiana 70112, first class mail, postage prepaid, at New Orleans, Louisiana, on this .... day of October, 1966.

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WILLIAM E. WRIGHT.

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